February 16, 2021

Ann E. Misback
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW.
Washington, DC 20551
Attention: Comments, RIN 7100-AF94

Re: Community Reinvestment Act; Docket No. R-1723, RIN 7100-AF94

Dear Madam or Sir:

Thank you for the opportunity to provide comment on the Federal Reserve's advance notice of proposed rulemaking (ANPR) regarding the modernization of the Community Reinvestment Act of 1977 (CRA).

The business of banking, the role of technology in delivering financial services and how consumers interact with their financial service providers has evolved considerably since the enactment of the CRA more than four decades ago and since the last major revisions to the CRA's implementing regulation more than two decades ago. This is to say it is good and appropriate to now explore in what ways the CRA can best be updated to address the business of banking today, but also that such exploration should be performed carefully and with caution to not result in unintended consequences, such as excessive costs and complexity, and flexibility to accommodate the increasingly swift evolution of financial services over the next two to four decades.

**Background**

Sallie Mae Bank (SMB or the Bank) is an Industrial Bank regulated by the Utah Department of Financial Institutions (UDFI), the Federal Deposit Insurance Corporation (FDIC), and the Consumer Financial Protection Bureau (CFPB). SMB is a primary operating affiliate of SLM Corporation, and as the leader in private student lending, SLM provides financing and know-how to support access to college and offer products and resources to help customers make new goals and experiences, beyond college, happen. As of December 31, 2020, the Bank had total assets of $30.7 billion.

SMB's primary business is to originate Private Education Loans to students and their families. "Private Education Loans" are education loans for students or their families that are not made, insured, or guaranteed by any state or federal government. The Bank also offers a range of deposit products insured by the FDIC, including social goal-based savings through the SmartyPig brand.

Overall, SMB continues to believe modernization of the CRA should be guided by the following principals:

1) Do no harm to elements of the current regulation that promote bank responsiveness to LMI and community development credit needs;
2) Enhance the regulation's recognition of individual bank business models; and
3) Extend current objective metric-based approaches to broader segments of CRA covered institutions

In our comment letter below, SMB addresses its observations of, and specific questions raised in the ANPR.

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Strategic Plans

SMB appreciates that the proposal retains the option for a bank to develop a strategic plan for addressing its CRA responsibilities and to be evaluated based on its performance under the plan. We believe the strategic plan option is truly the only viable evaluation method for banks with a nontraditional business model. The strategic plan option should continue to allow banks to tailor their CRA performance goals based on their business strategy, operational focus, capacity, constraints and needs of their community. Banks requesting to utilize the strategic plan option should not be constrained to the framework applicable to banks subject to the General Performance Standards. This flexibility for a bank to tailor its CRA measurable goals should be codified in the amended regulation.

SMB supports the ANPR's proposal to maintain that regulators will consult with banks regarding strategic plans.[1] SMB at times has consulted with the FDIC on its strategic plans and found this to be valuable, especially when circumstances surrounding the submission were unique.

In the development of a strategic plan, the current regulation requires both formal and informal public comments.[2] Through the process of soliciting public comments and completing a needs assessment banks are able to help identify the needs in their communities. These conversations provide valuable insight into the community and can help shape the focus of a bank's CRA program. Additionally, banks conduct needs assessment to further identify the community needs in its assessment area.

[1] See Q&A §__.27(c) – 1
[2] §228.27(d)(1)

Strategic plans currently include any formal comments received, a bank's response to formal comments received, a summary of a bank's informal community outreach efforts, and associated feedback received. Guidance on this process is detailed in the FDIC 's FIL-26-98 Community Reinvestment Act: Guide to Developing a Strategic Plan and the Federal Reserve's Guidelines for Requesting Approval for a Strategic Plan. This current practice sufficiently demonstrates a bank's engagement with its community and the consideration of that input in the development of a strategic plan.

SMB continues to believe that the regulators should also clarify the role that public comments will play in the approval of a strategic plan – for example what topics are in scope and how are they weighted? Doing so will guide both the content of the public comments as well as a bank's responses. Additionally, SMB supports the ANPR's proposal to codify in regulation the current guidance that banks are not required to enter into community benefit agreements as a condition of developing strategic plans.[3]

While in the past, strategic plan amendments were rarely utilized by banks, the COVID-19 pandemic has required many banks to request amendments to their strategic plans. The unique circumstances resulting from the pandemic impacted banks in a variety of ways from the closure of bank branches, the rapid increase of the use of electronic banking services, the limited availability of service hours, and the general economic decline in the country, to name a few. Any clarifying guidance provided on strategic plan amendments, should not be all encompassing and should allow for the unforeseeable changes that may occur within a banks unique business to those circumstances that may have a much larger and far reaching impact on the industry as whole. Additional guidance on what constitutes a minor change versus a major change, and the process a bank needs to undergo to make each type of change, will be beneficial for banks needing to update their plan.

Assessment Areas

SMB appreciates the Federal Reserve's acknowledgment of the challenges presented with the modernization of the delineation of assessment areas. SMB does not support the suggestion of designating assessment areas based on deposits or lending. Assessment area delineation based on deposits or lending will likely create more intense CD hot spots, especially for banks that collect a significant portion of their deposits online and have a nationwide online lending model. This is because such deposits and lending tend to be associated with areas of large populations dispersed throughout the country, de-emphasizing LMI communities with lower volumes of sourced deposits or lending. A review of SMB's deposits and lending revealed that 44% of its deposits and 35% of borrowers are in the five most populous states. For large internet banks, delineating assessment areas by deposits or lending will lead to a greater number of assessment areas in the most populous areas in the country, and it will leave out the smaller communities with greater need.

[3] See Q&A §__.29(b) – 2

As noted in its response to the OCC and FDIC NPR, SMB continues to support allowing branchless banks to “adopt” additional designated assessment areas and communities of identified LMI and community development needs. In other words, banks and regulators may identify existing CD deserts, and banks then select one or more deserts based on their ability to realistically perform CD Services in that area, such as satellite or affiliate locations where employees are located and work, and other connections to the community. Under this approach, banks could designate ‘other communities’ of identified LMI and community development credit needs that would not otherwise be served based on the locus of depositors and borrowers. Other banks might choose different criteria than employee presence to designate ‘other communities’ for CRA performance evaluation. For example, a bank might choose to designate communities where its non-bank community development partners had the requisite expertise and capacity to respond to LMI credit needs. SMB believes an option to designate ‘other communities’ for CRA performance evaluation, like the requirement for assessment areas, should be that – an option up to banks to propose subject to defining criteria as is required today for assessment areas. Granting banks an option for designating ‘other communities’ would help spread CRA activity, and be significantly more likely to reduce the number of CD hot spots and encourage engagement in CD deserts.

SMB continues to support the delineation of assessment areas where banks have offices chartered to conduct business and book deposits. For non-branch banks with alternative nationwide delivery systems like SMB, a requirement to draw assessment areas in geographies where a bank does not have a physical presence would force banks to be evaluated for CRA performance in communities that the bank likely does not have any knowledge of community needs. As noted above, the intimate knowledge of a bank’s community helps shape a bank’s CRA program and allows them to tailor it to the needs of their community. Conducting CRA activities in an area where a bank does not have a presence or capacity would be disadvantageous and contrary to the goals of the CRA of meaningful community involvement and support. Without the knowledge about a community, the “personal touch” that often goes into the smaller more meaningful deals will be lost.

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SMB appreciates the opportunity to share the Bank’s observations and recommendations on CRA modernization. If you have any questions or need clarification on any issue raised in these comments, please contact me at (302) 451-0382 or Harry.Zunino@salliemae.com.

Sincerely,

Harry Zunino

VP and Chief Compliance Officer